

PT 98-5

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

FIRST BAPTIST CHURCH OF DWIGHT)		
Applicant)	Docket #	95-53-23
)		
v.)	Parcel Index #	05-05-04-351-012
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue (hereinafter referred to as the "Department") on August 18, 1997, to determine whether or not Livingston County Parcel Index No. 05-05-04-351-012 qualified for exemption during the 1995 assessment year.

Alisha Hockaday, teacher, Jane Rhodes, teacher, and Thomas Eric Bryant, school principal and assistant pastor of the First Baptist Church of Dwight (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1995 assessment year; secondly, whether the applicant is a religious organization; and lastly, whether the parcel was used by the applicant for religious purposes during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned the parcel during the entire 1995

assessment year. It is also determined that the applicant is a religious organization. Finally, it is determined that the applicant used a portion of the parcel for religious purposes during the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department, that Livingston County Parcel Index Number 05-05-04-351-012 did not qualify for a property tax exemption for the 1995 assessment year, was established by the admission into evidence of Department's Exhibits numbered 1 through 5. (Tr. p. 8)

2. On June 6, 1996, the Department received a property tax exemption application from the Livingston County Board of Review for Permanent Parcel Index Number 05-05-04-351-012. The applicant had submitted the request, and the board recommended that the exemption be denied for the 1995 assessment year. (Dept. Grp. Ex. Ex. No. 2)

3. On December 5, 1996, the Department denied the requested exemption application, finding that the primary use of the property was not religious, the primary use of the property was not educational, and the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing held at the Department's offices in Springfield, Illinois, on August 18, 1997 was pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the parcel in issue by a warranty deed dated May 31, 1994. (Dept. Grp. Ex. No. 2 pp. 4, 5)

7. Adjacent and to the north of the property in question is located applicant's church building. The applicant also owns the property to the west of the property at issue. (Tr. p. 13)

8. The parcel is commonly known as 323 N. Clinton, Dwight, Illinois. (Dept. Grp. Ex. No. 1 pp. 1, 7)

9. On the parcel is a one-story frame residence, a garage, and a shed. (Dept. Grp. Ex. No. 2 pp. 1, 6)

10. The garage and shed are used for storage and maintenance for the church. In particular, the applicant maintains and services its seven vans, used for the church's bus ministry, at and around the garage. Lawn mowers, a tractor, a bush hog mower, and various implements used for the applicant's property are stored and used in the area. (Tr. pp. 12-13)

11. As part of applicant's ministry, it operates the Dwight Baptist Academy, a school for children from the age of four years through 12th grade. (Tr. pp. 10, 18)

12. The enrollment in applicant's school in 1995 was approximately 65. (Tr. p. 10)

13. In 1991, the applicant had a hearing with the Department regarding a requested exemption for Livingston County Parcel Index Number 05-04-351-027 for the 1989 assessment year. The exemption was not granted after the hearing because the parcel was vacant and not used. I take administrative notice of the fact that the Department granted the applicant a 100% exemption pursuant to Docket No. 95-53-16 for Livingston County Parcel Index Number 05-04-351-027, the above parcel index number. The parcel is used by the applicant for the football and soccer fields for physical education and recreation of the students of Dwight Baptist Academy.

14. The applicant asserts that the church building has a property tax exemption, however, I have been unable to locate one in the records of the Department. (Tr. p. 18)

15. The applicant's school does not have a property tax exemption with the Department. (Tr. p. 18)

16. The house on the property in question was occupied from the time of purchase by unmarried female teachers of the applicant's school. (Tr. pp. 11, 14)

17. The single teachers are required to reside in the house on the parcel in question. They do not pay rent. (Dept. Grp. Ex. No. 2 p. 3; Tr. p. 14)

18. The ability to reside in the house on the property in question is considered to be part of applicant's compensation package for the teacher. (Tr. p. 27)

19. The house has two bedrooms, a bathroom, utility room, kitchen, and a living room. (Tr. p. 30)

20. The teachers that live at the dwelling on the property sleep, eat, and live in the house. It is their home. (Tr. p. 30)

21. On several occasions teenage girls have also stayed in the house, so that the teachers could spend more time with them. (Tr. pp. 27-28)

22. The applicant does not have written contracts with its teachers. (Dept. Grp. Ex. No. 2 p. 3; Tr. p. 15)

23. The teachers that lived on the property in 1995 also worked at the church itself. One was the church pianist, one was in charge of the deaf ministry, and the third worked as a part-time secretary for the church. (Tr. p. 22)

24. Applicant's teachers are either college graduates of a Baptist college or a member of applicant's congregation. The teachers do not need to be certified. (Tr. pp. 22-23)

25. The applicant's school is registered with the state. The school is not certified. The credits earned by the applicant's students have been fully transferrable to public schools. (Tr. pp. 23-24)

26. The applicant pays for all utilities and insurance for the property in question. The applicant maintains the property. (Tr. p. 13)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:
The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 ILCS 200/15-

40. That portion of the statutes exempts certain property from taxation, in part as follows:

§ 15-40. Religious purposes, orphanages or school and religious purposes. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers . . . their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions . . .

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

Because I take administrative notice of the fact that the Department granted the applicant a 100% exemption pursuant to Docket No. 95-53-16 for Livingston County Parcel Index Number 05-04-351-027, I find that the Department has determined that the applicant is a religious organization. The warranty deed establishes that the applicant owned the parcel in question during the entire 1995 assessment year. Therefore, the only question at issue is whether the applicant used the parcel in question in an exempt manner during the period at issue.

The testimony of one of the teachers for the applicant was that the house on the property at issue is her home. The Illinois Courts have repeatedly held that parcels used

primarily for residential purposes are not exempt from taxation. Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill.App.3d 420 (2nd Dist. 1987); Benedictine Sisters of Sacred Heart v. Department of Revenue, 155 Ill.App.3d 325 (2nd. Dist. 1987). The courts have granted exemptions, pursuant to the statutory language above, to religious organizations who owned parsonages which were exclusively used for religious purposes when the organization required that the person who performed the religious related activities, as a condition of their employment or association, resided in the facility. Our Savior Lutheran Church v. Department of Revenue, 204 Ill.App.3d 1055 (5th Dist. 1990), leave to appeal denied. The statutory language regarding parsonages was found to be constitutional in McKenzie v. Johnson, 98 Ill.2d 87 (1983). The teachers for the applicant are not clergy and therefore can not qualify for the parsonage exemption.

Pertinent to the exemption request at issue is the fact that the Illinois Supreme Court has held that property owned by a church and used as a residence by a teacher at a parochial school was not exempt from taxation, even though the property was sometimes used for tutoring backward pupils enrolled in the school. The Court held that the property was not used "exclusively for school and religious purposes" as required by the statute. St. John Evangelical Lutheran Congregation v. Board of Appeals of Cook County, 357 Ill. 69 (1934).

I therefore find that the house located on the parcel here in question did not qualify for a property tax exemption for the 1995 assessment year.

However, I find that the shed and garage, used for storage and maintenance for the applicant's equipment, did qualify for an exemption. The Illinois Appellate Court determined that property owned by a church and used for the storage of church records and furniture did qualify for a property tax exemption in Our Savior Lutheran Church v. Department of Revenue, 204 Ill.App.3d 1055 (5th Dist. 1990), leave to appeal denied.

It is therefore recommended that the residence occupying 1019.43 square feet and the accompanying ground area on Livingston County Parcel Index Number 05-05-04-351-012,

remain on the tax rolls for the 1995 assessment year. It is also recommended that the garage, comprised of 484.41 square feet and the shed, comprised of 61.50 square feet, and the accompanying ground area of Livingston County Parcel Index Number 05-05-04-351-012, be exempted from real estate taxation for the 1995 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
January 27, 1998